

already taken or pledged to remedy any alleged violations of the National Labor Relations Act (the “Act”).

I. Background

It is important that the context and background of this case be considered when evaluating the Motion to Remand and the underlying Settlement Agreement. As noted above, all parties to this case—including the Charging Party—entered into a joint stipulation regarding the relevant facts in this case. From those agreed upon facts, it is clear that Ms. Shelby Krockner is the only individual affected by the alleged violations in this case and the only individual entitled to relief. That is, the Complaint in this case was filed on behalf of Ms. Krockner as an individual, and does not name any other employees. (The original case caption makes abundantly clear that the Complaint was filed on behalf of “Shelby Krockner, an individual.”) Nor does the stipulated record make any mention of any other employee or group of employees. On this record, there is not a shred of evidence that any employee other than the Charging Party herself was affected in any way by the words on the dues checkoff form or even that any other individual signed the same form at issue in this matter. The last-minute attempt here by the Charging Party’s attorneys to expand the universe of allegedly affected individuals is completely unsupported by the facts to which the Charging Party stipulated.

II. The Motion to Remand Should Be Granted Because the Settlement is Reasonable and Remedies The Allegations of the Complaint

All of the allegations of the Complaint have already been remedied or will be remedied by the undertakings and commitments set forth in the Settlement Agreement and the proposed Notice. Specifically, the words “Must be signed” (the primary focus of their original charge) were removed from the checkoff form even before any complaint was issued. As well, the record is uncontradicted that Ms. Krockner was released from any dues obligation and was refunded any

dues money before any complaint was issued. Moreover, the Union has already remedied or pledged to remedy all other aspects of the Complaint, including more clearly delineating between forms in the three-part authorization form, removing language from the dues checkoff form that gives the Union the authority to transfer the dues authorization to other employers, providing upon request the specific window period for revocation of dues forms, and providing notice that an employee can revoke the authorization at the expiration of a collective bargaining agreement. In these circumstances, it is clear that all aspects of the complaint in this matter will or have been remedied, and that the Notice to be posted by the Union on its website is designed to reach the widest possible audience (even beyond the collective bargaining agreement at issue).¹ The Acting General Counsel has thus achieved all of the relief that was sought in the Complaint and there is nothing to be gained by further expensive and time consuming litigation. The settlement in this case is more than “reasonable”—it is complete relief.

The Board has long made it crystal clear that it is the policy of the agency to “encourage the peaceful, nonlitigious resolution of disputes.” *Independent Stave*, 287 NLRB 740, 741 (1987). In *Independent Stave*, the Board identified four factors to be considered when examining settlements. *Id.* at 743. As Counsel for the General Counsel recounted, those factors are as follows:

- (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement;
- (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation;
- (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and
- (4)

¹ Despite the Charging Party’s representations to the contrary, under the proposed Settlement Agreement, the Union has agreed to put the Notice on a part of its website that is accessible to any visitor to the website. The Notice will not be password protected.

whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

Id. at 743.

Each one of those factors has been satisfied in the instant case. With regard to the first, second and fourth factors: the Acting General Counsel and the Respondent have agreed to the Settlement, there is no allegation whatsoever of fraud, coercion or duress by any party, and the Respondent has no history of engaging in similar alleged violations.

With regard to the second factor, as demonstrated above, the Charging Party's objections do not actually have anything to do with the allegations set forth in the Complaint and they are a last-minute attempt to expand upon the facts to which the Charging Party stipulated. As noted above, the remedies the Charging Party seeks are an extraordinary, unnecessary and punitive wish list totally divorced from the stipulated facts in this case. And they are an enormous expansion of the remedies which would normally flow from a case like this even if the Charging Party had stipulated to a more expansive set of facts (which it did not).

It is likewise manifest that the settlement is reasonable in light of the nature of the violations alleged and the risks involved in litigation. It should be noted here that the theories advanced by the former General Counsel in this case are inconsistent with existing precedent. The decision of the Chief Administrative Law Judge dismissing the allegations showed this—in no uncertain terms, he underlined the paucity of precedent for the Complaint here. As this Board held recently in *McDonalds USA, LLC*, 368 NLRB No. 134, slip op. at 26 (2019), settlement is especially appropriate in cases that “present novel and complex issues with unusual litigation risk.” Here, because the legal theories are novel and the remedies sought by the Charging Party are especially expansive in light of the facts to which her counsel stipulated, settlement is appropriate.

On the issue of whether settlement is appropriate at this stage of the litigation, this Board's decision in *McDonalds USA, LLC*, 368 NLRB No. 134 (2019) is instructive. There, this Board recounted the enormous amount of time and energy expended by the parties over 3 years in that case but it nevertheless accepted a settlement over the objection of the charging party. *Id.*, at *2-3. It held that:

In these circumstances, it does not appear that any overriding public interest would be served by forcing the General Counsel and the Respondents to continue litigatingThe settlement agreements provide a full remedy to the affected employees, eliminate the risk of losing, and save the parties from expending additional resources on the ... appellate process. The immediate remedy provided by the settlement agreements better protects employees Section 7 rights and ameliorates any lingering coercive effects of the alleged unfair labor practices than would the same remedy...after the Board and the appellate process has been exhausted.

Id. at *35. All of the comments of the Board in *McDonalds* are singularly applicable to the instant case as is the fact that the Board approved the settlement over the charging party's objection.

Indeed, the fact that the Charging Party objects to a settlement that offers complete relief should be of no consequence whatsoever. This Board held recently in *UPMC*, 365 NLRB No. 153, slip op. at 25-26 (2017),

Thus, the Board in *Independent Stave* clearly anticipated that unanimous agreement is not required for a settlement agreement to be approved....the agreement of the Charging Party is [not] a prerequisite to acceptance of a proposed settlement. Rather, the test is the reasonableness of the proposed settlement under the circumstances, and whether all or even any parties (besides the charged party) consent to the agreement is merely one among several relevant factors the Board must consider in determining whether the settlement is reasonable and should be accepted.

Between the decisions in *McDonalds* and *UPMC*, it is clear that the Board is more than comfortable with approving a settlement over the objection of a charging party. This is especially true where all the other *Independent Stave* factors are met, as they are here.

In sum, it is clear that all aspects of the Complaint have been remedied and the proposed Settlement and Notice fulfill the *Independent Stave* factors. Overall, this settlement falls squarely within the parameters that the Board has set forth in *Independent Stave*, *UPMC*, and *McDonalds* and should be approved by the Board. Counsel for the Charging Party's radical attempt to expand upon the Complaint and the facts to which they stipulated should be rejected.

III. The Challenges to the AGC's Authority

The Charging Party also raises a series of challenges to the Acting General Counsel's Authority to act and even to enter into reasonable settlement agreements such as the instant one. These challenges are completely without merit. The Respondent adopts and incorporates the arguments of the Acting General Counsel with regard to his authority and reiterates that his appointment was lawful and appropriate.

IV. Conclusion

For all of the foregoing reasons, the Joint Motion to Remand should be granted.

Respectfully submitted,

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